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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; public board members—conflicts of interest

Business and Professions Code §450.3 (new).
SB 1255 (Beilenson); STATS 1972, Ch 1032

Section 450.3 has been added to the Business and Professions Code to provide that no public member of any board, commission or agency created under the Business and Professions Code, shall have *any financial interest* in any organization subject to regulation by the board, commission or committee of which he is a member.

COMMENT

Most of the boards, commissions and agencies created under the Business and Professions Code consist primarily of members who are active in the field which the body licenses or regulates. For example, the Board of Pharmacy consists of seven pharmacists and one public member [CAL. BUS. & PROF. CODE §4001], the Board of Accountancy consists of six accountants and two public members [CAL. BUS. & PROF. CODE §5000], and the Contractor's State License Board consists of seven contractors and two public members [CAL. BUS. & PROF. CODE §7002].

Present law requires that a public member shall not have been an employer, officer, director, or representative of a licentiate of the board, and shall not have maintained a contractual relationship or have been an employee of any licentiate of the board within five years immediately preceding his appointment [CAL. BUS. & PROF. CODE §450]. Also, a public member cannot have been engaged at any time within five years immediately preceding his appointment in pursuits which lie within the industry or profession regulated by the board to which he is appointed, nor shall he engage in any such pursuits during his term of office [CAL. BUS. & PROF. CODE §450.5]. It seems that the addition of §450.3 will further assure that a public member of a board has no conflict of interest which might hinder his performance as a representative of the public.

Public Entities, Officers and Employees; joint exercise of powers

Government Code §§6503.5, 6503.7, 6546.1 (new); §6546.1 (repealed).

AB 523 (Knox); STATS 1972, Ch 1160

Chapter 1160 adds §6503.5 to the Government Code to provide that whenever a joint powers agreement provides for the creation of an agency or entity, which is separate from the parties to the agreement and is responsible for the administration of the agreement, such agency or entity shall, within 30 days after the effective date of the agreement or amendment thereto, prepare and file with the Secretary of State a notice of such agreement or amendment. Such notice shall contain: (a) the name of each public agency which is a party to the agreement; (b) the date upon which the agreement became effective; (c) a statement of purpose of the agreement or power to be exercised; and (d) a description of any amendment made to the agreement. Section 6503.5 further provides that failure to file the notice of any agreement or amendment becoming effective on or after the effective date of Chapter 1160 renders the agency or entity unable to issue any bonds or incur any indebtedness of any kind until such filings are complete.

Section 6503.7 has been added to provide that existing agencies (*i.e.* those constituted pursuant to an agreement entered into *prior* to the effective date of Chapter 1160) have 90 days from the effective date of Chapter 1160 to make the filings required by §6503.5. Any joint powers agency which is required and fails to file notice pursuant to this section within 90 days after the effective date of this section, shall not, thereafter, and until such filings are completed, issue any bonds or incur any debts, liabilities or obligations of any kind, or in any other way exercise any of its powers (§6503.7).

For purposes of recovering the costs incurred in filing and processing the notices required to be filed pursuant to §§6503.5 and 6503.7, the Secretary of State may establish a schedule of fees, reasonably related to the cost of performing the work to which the fees relate.

Finally, Chapter 1160 repeals and adds §6546.1 to the Government Code, which authorizes an agency, commission, or board provided for by a joint powers agreement [CAL. GOV'T CODE §6500 *et seq.*], and created in a county of the third class (for example San Diego County) [CAL. GOV'T CODE §28020]to authorize, by ordinance, the issuance of revenue bonds to acquire or construct a public airport and related facilities and improvements. The provisions of §6546.1 shall be effective only until December 31, 1974.

COMMENT

In 1967, the Legislature authorized the State Controller to compile and publish financial information about joint powers agencies in the same manner as is done for special districts [CAL. GOV'T CODE §53892.2]. Apparently, the Controller's Office has had some difficulty obtaining the information because there was no way of ascertaining the existence of a joint powers agency or entity [Interview with Steve Taber, Consultant to the Senate Committee on Local Government, Sacramento, California, Dec. 11, 1972].

The Controller's Office can easily determine the existence of special districts and cities because they are required to file with the Secretary of State's Office when they are created [CAL. GOV'T CODE §58133]. No such requirement existed with respect to joint powers agencies prior to Chapter 1160.

See Generally:
1) CAL. GOV'T CODE §53890 *et seq.*

Public Entities, Officers, and Employees; public leaseback agreements—sale of securities

Government Code §5800 *et seq.* (new); §6571 (amended); Streets and Highways Code §33138 (amended).
AB 1507 (Lanterman); STATS 1972, Ch 292

Requires competitive bidding for the sale of securities involved in a public leaseback; defines terms; makes related changes.

Section 5800 *et seq.* has been added to the Government Code, relating to the sale of local securities. Before selling any securities involved in a public leaseback agreement, any issuer (defined *infra*) must advertise the sale as public and invite sealed bids by publication of notice once at least 10 days before the date of such public sale in a newspaper of general circulation circulated within the boundaries of each public body to be aided by the public project to be financed by the issuance of such securities.

Section 5808 outlines the competitive bidding procedure. If one or more satisfactory bids are received pursuant to such notice, such securities shall be awarded to the highest responsible bidder. If no bids are received or if the issuer determines that the bids received are not satisfactory as to price or responsibility of the bidders, the issuer may reject all bids received, if any, and either readvertise or sell such securities at private sale.

Prior to this addition, there was no requirement that such local bonds be sold on a competitive bidding basis. A negotiated sale was often used by the issuer of the securities [Whealen, *The Indoctrination of Competitive Bidding Into the Field of Issuing Securities*, 3 HAST. L.J. 38 (1951)].

The securities may be issued by a nonprofit corporation, joint powers authority or a parking authority (§§5800-5803). As used within these provisions, "securities" means any bond, note, warrant or other evidence of indebtedness and the interest coupon attached thereto, issued or proposed to be issued in an aggregate amount of $500,000 or more by any issuer to finance a public project (§§5805, 5806).

A "public leaseback," as defined in this chapter, means any lease by a public body of all or any part of a public project where the lease is between such public body as lessee and an issuer as lessor, and the lease is executed before the public project is acquired, constructed or completed (§§5804, 5807). Leaseback agreements provide a method for a government agency to construct a public project, for example, a library, jail or civic center, without the necessity of issuing general obligation bonds. The governmental agency leases the building from the issuer of the securities pursuant to an agreement whereby the lease payments are applied to the securities' indebtedness.

Since joint powers authorities and parking authorities are covered by Chapter 292, in addition to nonprofit associations, Section 6571 of the Government Code (regarding the issuance and sale of joint powers revenue bonds) and Section 33138 of the Streets and Highways Code (regarding the sale of parking authority bonds), each has been amended to require that the sale be conducted in conformity with the new provisions contained in §5800 *et seq.* of the Government Code.

COMMENT

Joint powers revenue bonds are one of the principal means of lease-purchase financing in California, while nonprofit corporation bonds constitute another, less-used means [Taber and Whittaker, *Joint Powers Revenue Bonds: A Tool for Intergovernmental Cooperation in California*, 23 HAST. L.J. 791, 795 (1972)]. These bonds may be issued in response to pressure on cities, counties and school districts to avoid the constitutionally required two-thirds vote approval for general obligation bonds [CAL. CONST. art. XIII §40; Taber and Whittaker, *supra*, at 793].

There are differing views as to relative advantages to the issuer be-

tween a sale of bonds by competitive bidding and a sale by private negotiation. The sale of public securities using competitive bidding does protect public officials and others involved in the sale against charges of favoritism [Beebe, Hodgman and Sutherland, *Joint Powers Authority Revenue Bonds*, 41 So. CAL. L. REV. 19, 43 (1968)]. For that reason it is preferred over the negotiated sale. Generally speaking, most municipal bonds issued in California were sold with competitive bidding, even prior to the enactment of Chapter 292 [For an extensive treatment of the legal problems created by a competitive bidding system, especially as it concerns nonprofit corporation bonds, see Beebe, Hodgman and Sutherland, *supra,* at 38-46].

Rather than to perfect this arrangement between private investors and joint powers entities, it is arguable that a better solution may be to avoid this circuitous financing procedure altogether. This could be done by requiring a vote of a simple majority (rather than a two-thirds vote) of the voters of each public district involved for all bond issues (general obligation bonds and revenue bonds) [Taber and Whittaker, *supra,* at 800]. A bill to prohibit a local agency from entering into certain lease or rental contracts or agreements with a joint exercise of powers entity unless such contract or agreement is entered into pursuant to an ordinance which has been approved by a *majority* of voters was introduced in 1972, but failed to pass [A.B. 1817, 1972 Regular Session]. On the other hand, there are some supporters of joint power bonds who advocate the use of such bonds for unpopular projects which would not be approved by a simple majority [Taber and Whittaker, *supra,* at 801].

See Generally:

1) Dean v. Kuchel, 35 Cal. 2d 444, 218 P.2d 521 (1950).
2) CAL. GOV'T CODE §§6540-6578, 54300 *et seq.*
3) Taber and Whittaker, *Joint Powers Revenue Bonds: A Tool for Intergovernmental Cooperation in California,* 23 HAST. L.J. 791 (1972).
4) Beebe, Hodgman and Sutherland, *Joint Powers Authority Revenue Bonds,* 41 So. CAL. L. REV. 19 (1968).
5) Whealen, *The Indoctrination of Competitive Bidding Into the Field of Issuing Securities,* 3 HAST. L.J. 38 (1951).

Public Entities, Officers, and Employees; public leaseback agreements—local ordinances

Government Code §54240 *et seq.* (new).
AB 556 (Knox); STATS 1972, Ch 304

Provides that public leasebacks of local agencies be implemented only by ordinance subject to referendum, and, if subject to successful

referendum or otherwise repealed, shall not be reenacted for one year; excepts leasebacks executed prior to effective date of bill and those upon which formal action to implement, as defined, has been taken.

Chapter 304, which adds §54240 *et seq.* to the Government Code, provides in §54241 that no public leaseback of any local agency shall be entered into until the act of entering into a formal agreement with the public leaseback corporation [§54240(c)] has been approved by the local agency by an ordinance which shall be subject to the provisions for referendum applicable to the local agency. This section applies only to public leaseback agreements which will exceed five years or more.

Section 54242 specifies the procedure a local agency must follow in approving the public leaseback agreement. Any ordinance subject to referendum under §54241 shall be published after adoption as required by law for ordinances of the local agency generally, or, if there be no such requirement applicable to such ordinance, then it shall be published once pursuant to the provisions of §§6040-6044 of the Government Code, concerning the publication of official notices, within 15 days after the adoption of such ordinance. If a local agency does not otherwise have statutory power to enact an ordinance pursuant to §54241, or if ordinances of a local agency are not otherwise subject to referendum, §54242 provides procedures for both.

In the event an ordinance enacted pursuant to §54241, authorizing a local agency to enter into a public leaseback, is subjected to a successful referendum election or is repealed or rescinded by the local agency, no ordinance authorizing the local agency to enter into a public leaseback for the same or substantially same purpose shall be passed by that local agency for a period of one year from the date of such referendum, repeal or rescission (§54243).

Chapter 304 specifies that §54241 shall not apply to two classes of public leaseback agreements. First, it shall not apply to any public leaseback which is executed prior to the effective date of §54241. Second, §54241 shall not apply if any one or more local or public agencies shall (prior to the effective date of §54241) have taken formal action to implement any one or more projects to be acquired or constructed pursuant to a public leaseback. "Formal action to implement a project" includes: (a) the incurring of liability of $5,000 or more for a substantial portion of an architectural or engineering contract or other contract relating to a project; (b) the acquisition of land or im-

provements for the project; and (c) the making of a contribution totaling $5,000 or more toward the leaseback project (§54245).

COMMENT

Section 18 of article XXI of the Constitution of California provides that "no county, city, town or board of education or school district shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose. . . ."

Under existing law, however [CAL. GOV'T CODE §§4220-4224], local agencies are authorized to enter into agreements with public or private corporations for the lease of land, buildings or other structures. The agreements are called leasebacks and are generally used by local agencies when they cannot get voter approval of a bond issue to finance the acquisition of lands, buildings, or other structures [Taber and Whittaker, *Joint Powers Revenue Bonds: A Tool for Intergovernmental Cooperation in California*, 23 HAST. L.J. 791, 793-94 (1972)]. For example, last year, according to the Office of the State Controller, the counties in California accrued a debt of $719,819,356 through lease-purchase agreements, and California cities have also accumulated a huge debt via these arrangements [Los Angeles Daily Journal, March 29, 1972, at 1].

The legality of lease-purchase financing was upheld in *City of La Habra v. Pellerin* [216 Cal. App. 2d 99, 30 Cal. Rptr. 752 (1963) (hereinafter cited as *Pellerin*)], where a city had made an agreement to lease police and fire buildings from a nonprofit corporation at an agreed price for a period of 20 years, at the end of which time the title to the entire property was to pass to the city. To finance the facilities, the non-profit corporation proposed to issue bonds and pay off the indebtedness on the bonds from the lease rentals obtained from the city. The court held "there is no provision in the proposed lease between city and [nonprofit corporation] by which the entire sums due over a period of 20 years may become due and payable at one time. The lease does not create an immediate indebtedness for the aggregate amount of the installment rent due, but on the contrary creates a liability month to month for the consideration furnished by the lease in said months and the total of each year's payment is for the consideration actually promised that year, all of which is within the financial ability of the city to pay; hence, the lease does not violate sec-

tion 18 of article XI of the California Constitution" [*Pellerin,* at 102, 30 Cal. Rptr. at 754].

However, authorities in the field of lease-purchase financing seem to agree with the dissent in *County of Los Angeles v. Byram* [36 Cal. 2d 694, 702, 227 P.2d 4, 9 (1951)], where Justice Edwards stated that "a [lease-purchase agreement] is no more than a cleverly designed subterfuge to evade the limitations . . . of the Constitution" [Taber and Whittaker, *supra,* at 795].

Assemblyman John Knox, the author of Chapter 304, in support of this legislation argued that "in the past years there has been increasing criticism of leaseback arrangements because of the lack of an opportunity for a public vote or referendum on what really amounts to the use of public funds for a long-term capital investment" [Los Angeles Daily Journal, April 27, 1972, at 1]. Knox also commented, "the public has no recourse if it disapproves of the lease-purchase contracts now. In many instances the method is being used to build facilities which have already been rejected by voters on proposals for general bond financing" [Los Angeles Daily Journal, March 29, 1972, at 1].

Chapter 304 requires a local agency to pass an ordinance before a lease-purchase agreement for five years or more could be made. The ordinance must describe the general terms of the project and give its approximate total cost. It allows, through a referendum procedure, the public to take exception to such a city or county project.

One procedural point which may require resolution is that Chapter 304 makes no provision to insure that local agencies do not split what would normally be a long-term leaseback agreement into short-term agreements with terms of less than five years in order not to be subject to the referendum procedure.

See Generally:
1) CAL. GOV'T CODE §4220 *et seq.*
2) 48 OPS. ATT'Y GEN. 112 (1966).

Public Entities, Officers, and Employees; school district bonds

Education Code §1906.1 (new).
AB 114 (Deddeh); STATS 1972, Ch 47
(Effective April 20, 1972)

Section 1906.1 has been added to the Education Code to provide that when a school district is lapsed pursuant to the provisions of Education Code §2701 *et seq.* and ordered by the county board of supervisors to be annexed to an adjoining district, *authorized but unsold*

bonds of the annexing district may be issued by the board of supervisors in the name of the annexing district to the same extent as though the territory of the lapsed district had formed a part of the annexing district on the date the bonds were authorized.

The proceeds derived from the sale of such bonds shall be used only for the purpose or purposes for which the bonds were voted and for the benefit of the entire territory of the district following the annexation. The territory so annexed shall assume its proportionate share of the bonded indebtedness resulting from the sale of such previously authorized but unsold bonds.

COMMENT

According to the statement of necessity justifying this measure as an urgency statute, under prior law a school district which had authorized but unsold bonds, and, as a result of lapsation and annexation of an adjoining school district, was forced to assume the burdens of educating children of the annexed district could not sell those bonds in an amount determined by including the assessed valuation of the annexed territory.

In addition, the annexed territory would not assume its share of the indebtedness resulting upon sale of the previously authorized bonds, even though it would share equally in the benefits derived from the proceeds of the sale [A.B. 114, CAL. STATS. 1972 c. 47, §2].

A.B. 114 was introduced by Assemblyman Deddeh in response to a situation in which the Jamul-Las Flores Elementary School District in San Diego, into which the Dulzura Elementary School District was lapsed in 1971, was required to have issued $185,000 in bonds to qualify for a state loan. The County Counsel refused to allow Jamul-Las Flores District to issue bonds on the former Dulzura District because it was not part of the district when the bonds were *authorized.* Consequently, the bond issue was limited to $125,000, based on the assessed valuation of the Jamul-Las Flores District only, and the district did not qualify for the State School Building Aid Loan [Interview with Don Anderson, Executive Secretary of the State Allocations Board, Sacramento, California, Oct. 5, 1972].

Chapter 47 allows the assessed valuation of the lapsed district (*e.g.*, Dulzura) to be included within the total assessed valuation of the annexing district (*e.g.*, Jamul) as if the territory of the lapsed district had formed a part of the annexing district on the date the bonds were authorized.

Public Entities, Officers, and Employees; municipal utilities district bonds

Public Utilities Code §§12841, 13211, 13623 (amended).
AB 1535 (Meade); STATS 1972, Ch 172

Section 12841 of the Public Utilities Code, authorizing a municipal utility district to borrow money and to incur indebtedness, has been amended to require the approval of two-thirds, rather than the previously required simple majority, of the voters voting on the proposition to permit municipal utility districts to incur indebtedness exceeding the ordinary annual income and revenue of the district.

Sections 13211 and 13623 of the Public Utilities Code have also been amended to include the two-thirds approval requirement, rather than a simple majority approval which was required prior to amendment by Chapter 172.

COMMENT

In June, 1970, the California Supreme Court held that the two-thirds voter requirement for general obligation bonds violated the equal protection clause of the U.S. Constitution in that it discriminated against affirmative voters and no compelling state interest was shown [Westbrook v. Mihaly, 2 Cal. 3d 765, 471 P.2d 487, 87 Cal. Rptr. 839 (1970)]. The petitioners in *Westbrook* sought an action for mandamus to compel authorities to certify local San Francisco bond issues, which had received a majority vote, as having been approved, although the bond issues did not receive the two-thirds majority required by the California Constitution. Declaring the two-thirds vote unconstitutional, the court argued that each negative voter has twice the voting power of each affirmative voter.

At the time of the California court decision in *Westbrook*, the Municipal Utility District Act [CAL. PUB. UTIL. CODE §11501 *et seq.*] required a two-thirds vote on general obligation bonds. After the *Westbrook* decision in June, certain municipal utility districts, who had bond elections scheduled for the fall, were unsure whether a simple majority or a two-thirds vote would be required to authorize the bond issue.

In response to the court decision, the Legislature amended §12841 of the Public Utilities Code to require a simple majority vote to authorize general obligation bonds [S.B. 615, CAL. STATS. 1970, c. 1038, at 1862]. Section 7 of Chapter 1038 stated that if the case of *Westbrook v. Mihaly* were to be reversed by the U.S. Supreme

Court, the authority to issue bonds by a majority vote would automatically terminate. However, all bond issues passed between the effective date of Chapter 1038 and the reversal of *Westbrook* were not to be subsequently invalidated.

In 1971, one year after the California Supreme Court ruled on *Westbrook v. Mihaly*, the United States Supreme Court impliedly overruled the decision with a contrary holding in *Gordon v. Lance*, 403 U.S. 1 (1971). There the Court held that a state's requiring more than a simple majority on tax and revenue measures is constitutional and not a denial of equal protection as long as it does not discriminate against any identifiable class [Gordon v. Lance, at 7]. A two-thirds vote to approve bonds does not violate the federal one-man one-vote Constitutional mandate [Gordon v. Lance, at 8].

Chapter 172, by amending §§12841, 13211, and 13623 of the Public Utilities Code, restores the two-thirds vote requirement for general obligation bonds issued by municipal utility districts, in conformity with the Supreme Court's ruling in *Gordon v. Lance.*

Although the decision in *Westbrook* applied to municipal bonds [CAL. GOV'T CODE §43614] and to school bonds [CAL. EDUC. CODE §21754], the code sections applicable to these bonds were not amended to provide for the simple majority vote. Thus, these sections still require the two-thirds voter approval for issuance of bonds.

See Generally:

1) 15 E. MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §43.01 *et seq.* (Rev. 3d ed. 1970).
2) Comment, *Municipal Bonding Elections—Extraordinary Majority Rule—Denial of Equal Protection,* 4 LOYOLA L. REV. 423 (1971).

Public Entities, Officers, and Employees; municipal park improvement districts—bonds

Public Resources Code §§5361, 5364 (amended); §§5359.1, 5363.1, 5368.5 (new).

SB 1175 (Behr); STATS 1972, Ch 499

Public Resources Code §5350 allows a municipal park improvement district to be formed within a municipality for the purpose of incurring indebtedness to construct or acquire public park improvements. In order to form such a district, a petition must be signed by 10% of the voters of the district [CAL. PUB. RESOURCES CODE §5351], and the incurring of bonded indebtedness must be approved at an election by two-thirds of the voters of the district voting in the election [CAL. PUB. RESOURCES CODE §5359].

Chapter 499 amends §5364 to authorize the legislative body to provide in the resolution or ordinance calling the bond election, that the tax to pay principal and interest on the bonds provided for in §5364 shall be levied and collected upon *all taxable property* (land and improvements) in the district, rather than on taxable land. If the proposition submitted pursuant to such resolution or ordinance is approved as provided in §5359, the tax shall be levied as provided in such ordinance or resolution.

Chapter 499 adds §5359.1 to the Public Resources Code to authorize the legislative body of the district to divide the principal amount of any issue of bonds into two or more series and to fix different dates for bonding each series. The bonds of one series may be made payable at different times from those of any other series. The maturity of each series shall comply with §§5361 and 5363.1 *infra.*

Section 5361, both before and after amendment, provides that, beginning with the date of the earliest maturity of each issue or series, not less than one-fortieth of the total indebtedness (i.e., the principal) of such issue or series shall be paid each year. However, §5361, as amended, states that less than one-fortieth of the indebtedness may be paid in a given year provided that the bonds are made to mature and become payable in approximately equal total annual installments of principal *and interest*, which annual installments may vary one from another in amounts not exceeding in any year more than 5 percent of the total principal amount of the bonds. The final maturity date shall not exceed 40 years from the time of incurring the indebtedness evidenced by each issue or series. Section 5363.1 has been added to the Public Resources Code to allow an action to determine the validity of bonds to be brought pursuant to §860 *et seq.* of the Code of Civil Procedure.

Finally, Section 5368.5 has been added to the Public Resources Code to provide that any property in the municipality within which the municipal park improvement district is formed may be annexed to such district in the manner provided in §72670 *et seq.* of the Water Code, applicable to municipal water district improvement districts. These sections provide for annexation initiated by a petition signed by the holders of title to at least 60 percent of the land in the portion proposed to be annexed, which land must have an assessed valuation of not less than 50 percent of the land proposed to be annexed. Prior to the addition of §5368.5, there was no provision for the annexation of territory to a municipal park improvement district.

Public Entities, Officers, and Employees; grant anticipation notes

Government Code §§53856, 53858 (amended); §53859 *et seq.* (new).
SB 1085 (Carpenter); STATS 1972, Ch 552
(Effective August 4, 1972)

Establishes procedure for cities, counties, or districts to issue temporary notes against specified accounts receivable from the state or federal government.

The Constitution of the State of California provides that a city, county or school district may not incur a debt for more than the revenue receivable for the year in which the debt is incurred without a two-thirds vote of the people [CAL. CONST. art. XIII, §40].

Existing law [CAL. GOV'T CODE §53850 *et seq.*] specifies a procedure whereby local agencies may borrow money without a vote so long as it is repaid within the fiscal year in which borrowed or is payable only from money which has accrued or was received within the fiscal year, if the note is repaid within 15 months after date of issue (§53854). Chapter 552 deletes "accrued accounts receivable from state or federal governments for which funds have been committed and appropriated" from Government Code §§53856 and 53858, which list types of funds which may be pledged to the payment of such notes (§53856), and which establish limits on the amount of the notes [they may not exceed 85 percent of the then estimated uncollected taxes, income, revenue, cash receipts and other available money (§53858)].

To replace the provisions deleted from §§53856 and 53858, Chapter 552 adds §53859 *et seq.* to the Government Code to specifically provide a procedure for local agencies [as defined in §53859(a)] to borrow on anticipated federal or state grants by means of a *grant anticipation note.* "Grant anticipation note" is defined as a note issued upon the security of specified accounts receivable from state or federal governments for which funds have been committed and appropriated [§53859(b)]. Any amount borrowed pursuant to these sections shall not be considered a limitation on the amount which may be borrowed by any local agency under any other law.

Section 53859.02 specifies that an indebtedness incurred pursuant to these provisions shall be represented by the grant anticipation note, and may be used and expended solely for the purpose for which the grant is to be received. The grant note shall be issued pursuant to a resolution authorizing the issuance thereof (§53859.03), which may

provide that the note shall be subject to call and redemption prior to maturity (§53859.05). Notwithstanding §§53854 and 53856, any note issued pursuant to this article to the extent not paid from grant funds of the local agency pledged for payment thereof, shall be paid, with interest, from taxes, income, revenue, cash receipts or other moneys of the local agency available therefor (§53859.07).

Except as limited by the Constitution of the State of California [CAL. CONST. art. XIII, §40], such note shall be payable not later than 36 months after the date of issue and shall be payable (except as provided in §53859.07, *supra*) from committed and appropriated funds of state and federal government grants, with interest not to exceed 7% per annum, payable as provided on its face. In those instances, where the constitution limits a local agency from incurring an indebtedness or liability in any year which is in excess of income and revenue for that year, a note or notes issued pursuant to this article may be made payable during the fiscal year next succeeding the fiscal year in which they have been issued, but in no event later than 15 months after the date of issue; provided that such note shall be payable only from income and revenue received or accrued during the fiscal year in which the note was issued (§53859.04).

Grant funds received for any legally authorized capital improvements for which the local agency is authorized to expend money, when stated by the granting authority to be committed, appropriated and payable, shall be pledged for the payment of grant anticipation notes, and the notes are a first lien upon and charge against the grant funds (§53859.06).

A grant anticipation note or notes shall not be issued pursuant to this article in an amount at any time outstanding which, when added to the interest payable thereon, shall exceed 80 percent of the grant funds stated in writing by the granting authority as committed, appropriated and that shall be paid on a specified date or dates within a 36-month period from the dating of such notes (§53859.08).

COMMENT

In order for local agencies to proceed with much needed projects affecting the environment and to provide a means of funding the federal or state portions of the costs pending the payment or repayment thereof, the Legislature felt that it is essential that this act take effect immediately [A.B. 1085, CAL. STATS. 1972, c. 552, §4].

It may be noted that grant anticipation notes may not exceed 80 per-

cent of the anticipated grant, rather than 85 percent of the grant, which is the limit specified in the general provisions of §53850 *et seq.* relating to temporary borrowing. There is no apparent reason for the reduction.

Public Entities, Officers, and Employees; zoning

Government Code §65853 (amended).
SB 1186 (Nejedly); STATS 1972, Ch 384

Specifies that upon failure of a planning commission to act within a reasonable time, the legislative body of a city or county may require such commission to hold a public hearing and render its report within 40 days.

Section 65853 of the Government Code provides that a zoning ordinance, or an amendment to a zoning ordinance which changes any property from one zone to another or imposes any regulation listed in §65850 (discussed *infra*) not theretofore imposed, or removes or modifies any such regulation theretofore imposed, shall be adopted in the manner set forth in §§65854 to 65857, inclusive. These sections specify the procedure to be followed for a planning commission hearing on such ordinance or amendment (§65854), for a subsequent recommendation by the planning commission (§65855), for a public hearing by the legislative body upon receipt of recommendation of the planning commission (§65856), and for modification or disapproval of the planning commission recommendations by the legislative body (§65857).

Section 65850 specifically enables a legislative body of a city or county to enact the following zoning ordinances: (1) regulation of the use of buildings, structures, and land as between industry, business, residents, open space including agriculture, recreation, enjoyment of scenic beauty and use of natural resources, and other purposes; (2) regulation of signs and billboards; (3) regulation of location, height, bulk, number of stories and size of buildings and structures, the size and use of lots, yards, courts and other open spaces, the percentage of a lot which may be occupied by a building or structure, the intensity of land use; (4) establishment of requirements for offstreet parking and loading; (5) establishment and maintenance of building setback lines; (6) creation of civic districts around civic centers, public parks, public buildings or public grounds and establishment of regulations therefor. Any other amendment to a zoning ordinance may be adopted as other ordinances are adopted.

Chapter 384 amends §65853 to state that when the legislative body has requested the planning commission to study and report upon a zoning ordinance or amendment which is within the scope of this section and the planning commission fails to act upon such request within a reasonable time, the legislative body may, by written notice, require the planning commission to render its report within 40 days. Upon receipt of such notice the planning commission, if it has not done so, shall conduct the public hearing as required by §65854.

Chapter 384 further provides that failure to so report to the legislative body within the above time period shall be deemed an *approval* of the proposed zoning ordinance or amendment to a zoning ordinance.

COMMENT

Existing law allows cities and counties to enact zoning regulations [CAL. GOV'T CODE §65850 *et seq.*]. To change property from one zone to another or to impose or modify a regulation contained within §65850, Government Code §65854 specifies that the planning commission shall hold a public hearing on any such ordinance or amendment and make appropriate recommendations (§65855).

Chapter 384 allows the legislative body, by written notice, to place a time limit upon the planning commission study after the commission itself has not acted within a reasonable time on the proposal. Prior to amendment, §65853 contained no limits on the time within which the planning commission was to consider the original zoning proposal or amendment proposed by the legislative body. However, a 40-day time provision existed in the Government Code, concerning the legislative body's modification or disapproval of the planning commission's *recommendations* (§65857). Review of such modification of the recommendation is to be made by the planning commission within 40 days (or longer if specified by the legislative body) after the reference of the change to the commission. Failure to do so also constitutes approval of the proposed modification.

See Generally:

1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA ZONING PRACTICE §§7.2, 7.3, 10.16, 10.34 *et seq.*, 10.45 (1969).

Public Entities, Officers and Employees; zoning ordinances

Government Code §65860 (amended).

SB 1239 (Deukmejian); STATS 1972, Ch 1298

Section 65860 of the Government Code has been amended to re-

quire that city or county zoning ordinances be made consistent with the general plan of the city or county by July 1, 1973. Previously, §65860 required conformity by January 1, 1973. Similarly, any court action or proceedings initiated pursuant to §65860(b) to enforce compliance with this section, must now be brought within six months of July 1, 1973, or within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance.

Chapter 1298 also provides that a zoning ordinance shall be consistent with a city or county general plan only if:

(a) The city or county has officially adopted such a plan; and

(b) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses and programs specified in such plan.

See Generally:

1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA ZONING PRACTICE §2.28 (1969).

Public Entities, Officers, and Employees; alteration of boundaries—contiguous cities

Government Code §§35271.7, 54797.2 (repealed).
AB 2323 (Knox); STATS 1972, Ch 288

Chapter 288 repeals §§35271.7 and 54797.2 of the Government Code [*as enacted,* CAL. STATS. 1971, c. 483 at 967] which described physical characteristics of specified territory and would have permitted such territory to be transferred from one city to another without the consent of either city if the local agency formation commission had given its approval.

COMMENT

Generally, transfer of territory from one city to a contiguous city requires that both cities pass a resolution of consent to transfer the territory [CAL. GOV'T CODE §35271]. However, an exception to this general rule was made in 1971 by the enactment of AB 2072 (introduced by Assemblymen Porter and Thomas from Los Angeles) which added §35271.7 and 54797.2 to the Government Code. Had these sections not been repealed, they would have allowed a board of supervisors to approve by resolution the transfer of any territory which met certain very specific conditions (set out in the section) without notice, hearing, or election if the local agency formation commission gave its approval and authorization.

In effect, and evidently unbeknownst to the legislators who passed AB 2072, the 1971 legislation would have permitted Emeryville to annex the Judson Pacific Steel Co. from Oakland without the consent of Oakland's City Council. Assemblyman John Knox, from Contra Costa County, who introduced AB 2323 this session, stated that the firm paid approximately $25,000 per year in city taxes in Oakland, and would pay about $6,000 in Emeryville [Sacramento Bee, May 19, 1972, at A 11, col. 3].

See Generally:
1) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 408 (1972).

Public Entities, Officers, and Employees; local agency formation commission powers

Government Code §§54774, 54790, 54796 (amended); §§35703.5, 35803.5 (new).
AB 237 (Knox); STATS 1972, Ch 792

Sections 35703.5 and 35803.5 have been added to the Government Code, relating to local agency formation commission (LAFCO) approval of consolidation of cities. Before the addition of these two sections, LAFCO had no authority to review the consolidation of two or more cities.

Chapter 792 adds §35703.5 to the Government Code, under the "Municipal Consolidation Act of 1909" [CAL. GOV'T CODE §35700 *et seq.*], which applies in every case of contiguous municipalities desiring to consolidate [34 CAL. JUR. 2d *Municipal Corporations* §113 (Rev. 1957)]. Section 35703.5 provides that no petition seeking the consolidation of two or more cities shall be circulated or filed pursuant to Government Code §35700 *et seq.*, nor shall any public officer accept any such petition for filing until approval of LAFCO is first obtained pursuant to Government Code §54773 *et seq.*, relating to the powers and purposes of local agency formation commissions.

Section 35803.5 was added to the "Municipal Consolidation Act of 1913" [CAL. GOV'T CODE §35800 *et seq.*], relating to consolidation of contiguous cities situated in the same county [34 CAL. JUR. 2d *Municipal Corporations* §122 (Rev. 1957)], to require LAFCO approval of such consolidations before a petition is filed.

Chapter 792 also amends §54790 of the Government Code to provide that, while LAFCO cannot impose any conditions which would *directly* regulate land use [CAL. GOV'T CODE §54790(a)(3)], the

local agency formation commission *may* require a city to prezone territory to be annexed to local agencies so long as it shall not specify how or in what manner the territory shall be prezoned. Before amendment, §54790 merely stated that the commission shall not impose any conditions which would directly regulate land use or subdivision requirements. Chapter 792 clarifies this provision.

Finally, Chapter 792 makes non-substantive, clarifying amendments to §§54774 and 54796 of the Government Code, regarding LAFCO's responsibility for determining the "sphere of influence" of special districts and cities within a county.

See Generally:
1) CAL. GOV'T CODE §§35700 *et seq.*, 35800 *et seq.*

Public Entities, Officers, and Employees; fire protection districts

Government Code §54797.3 (amended and renumbered); §§54797.3, 58950(new). Health and Safety Code §13917.5 (amended).
AB 1936 (Knox); STATS 1972, Ch 576

There are two alternative procedures for *dissolving* a fire protection district or *detaching* territory from a fire protection district or county service area: (1) such proceedings may be conducted as a reorganization under the District Reorganization Act [CAL. GOV'T CODE §56000 *et seq.*]; (2) or they may be conducted pursuant to the Fire Protection District Law of 1961 [CAL. HEALTH AND SAFETY CODE CODE §13801 *et seq.*] or the County Service Area Law [CAL. GOV'T CODE §25210.1 *et seq.*], *without local agency formation commission* (LAFCO) *approval.* The annexation or incorporation proceedings would be conducted separately from the dissolution or detachment proceedings.

Under the first procedure above-mentioned, LAFCO *may require* as a condition to dissolution or detachment, that the dissolved or detached territory be subject to continued liability for any outstanding indebtedness of the district [CAL. GOV'T CODE §56420]. Under the second alternative, prior to addition of §54797.3 to the Government Code, LAFCO did not have the authority to impose such conditions. Chapter 576, by adding §54797.3, gives LAFCO the authority to impose conditions set forth in §56740 (which includes imposing liability for outstanding indebtedness) when territory is detached from a fire protection district or county service area pursuant to the Fire Protection District Law or County Service Area Law. Al-

though the previous §54797.3 was not repealed by Chapter 576 because of an oversight, the language of the added section should supercede that provision.

Chapter 576 purports to renumber the present §54797.4. Since it was renumbered as such in 1971 [A.B. 2072, CAL. STATS. 1971, c. 483, §4, at 869], Chapter 576 should have no effect on this section.

Chapter 576 adds §58950 to the Government Code, relating to the district indebtedness described above. The new section provides a procedure by which *detached* territory subjected to the LAFCO conditions of §56470 (continued tax liability for outstanding indebtedness on bonds of the district) may be absolved and relieved from the annual tax liability by the governing body of the district from which the territory was detached. The district board shall pass a resolution declaring its intention to relieve the territory from liability [§58950(a)], shall give notice [§58950(b)] and hold a hearing on the matter [§58950(c)], after which a resolution will be passed on the board's decision. The detached territory shall be relieved of annual tax liability for district bonds imposed by LAFCO in the year next succeeding adoption of the resolution when assessments or taxes are to be levied for payment of the principal and interest on the bonds.

Relief of the annual tax obligation would *not* in any way limit the power of a bondholder to enforce his contractual rights against the detached territory in case of default on the bonds [§58950(d)]. The intent of this section was to provide a means of relieving territory detached from a district from annual assessments for the principal and interest on bonded indebtedness when such territory is no longer receiving the services for which such bonded indebtedness was incurred [§58950(d)].

Chapter 576 amends §13917.5 of the Health and Safety Code by authorizing all fire protection districts organized under the Fire Protection District Law of 1961 [CAL. HEALTH AND SAFETY CODE §13801 *et seq.*], rather than just those districts located in Yolo County, to purchase necessary *equipment* by means of a plan to borrow money or by purchase on a contract.

Public Entities, Officers, and Employees; general plans

Government Code §34217 (amended); §§34211.1, 65302.2, 65307 (new).

SB1324 (Lagomarsino); STATS 1972, Ch 902

Section 34211.1 has been added to the Government Code to require

the Council on Intergovernmental Relations to adopt guidelines for the preparation and content of the mandatory elements of city and county general plans. Such guidelines shall take into account different geographic, demographic and other relevant characteristics among the various cities and counties. The guidelines shall be adopted as soon as possible, and, in any event shall be adopted within six months of the effective date of this section. Section 34217 has been amended to require cities and counties to submit an annual report, beginning October 1, 1974, to indicate the degree of compliance with the guidelines adopted pursuant to Section 34211.1.

Section 65302.2 has been added to the Government Code to provide that notwithstanding any other provision of law, every city and county shall prepare and adopt the seismic safety element, the noise element, the safety element, the scenic highway element and any other element hereafter required to be included in its general plan no later than one year following the adoption of guidelines for the preparation of such elements pursuant to Section 34211.1. Upon application by a city or county, the Council on Intergovernmental Relations may, in cases of extreme hardship, extend the date for adopting such elements for a reasonable period of time.

See Generally:

1) CAL. GOV'T CODE §§65302, 65302.1.
2) Comment, *Parochialism on the Bay: An Analysis of Land Use Planning in the San Francisco Bay Area,* 55 CALIF. L. REV. 836 (1967).

Public Entities, Officers, and Employees; formation of county service areas

Government Code §§25210.11, 25210.13, 25210.14, 25210.18 (amended); §25210.18a (new).
SB 54 (Nejedly); STATS 1972, Ch 157
AB 974 (Duffy); STATS 1972, Ch 734
(Effective July 1, 1973)

Chapter 734 amends Section 25210.11 of the Government Code to require that proceedings for the establishment of a county service area [*See* CAL. GOV'T CODE §25210.1, *et seq.*] shall be instituted by the board of supervisors when a written request therefor, in the form of a resolution adopted by a majority vote of the governing body of any city in the county, is filed with the board, provided that such resolution shall be available only to the governing body of a city located in a county with less than 4,000,000 population. The provisions of

§25210.11, regarding the initiation of such proceedings by the board of supervisors upon a written request therefor signed by two members of the board, or upon a petition signed by the requisite number of registered voters, remain unchanged by Chapter 734.

Section 25210.13, regarding the necessity of approval by a local agency formation commission, and §25210.14, pertaining to the requirement of a resolution of intention to establish a county service area, in the form specified in §25210.15, have been amended to conform with the change in §25210.11.

Section 25210.15 provides that the resolution of intention shall fix a time and place for a public hearing on the establishment of the area. Such a public hearing is for the purpose of obtaining the testimony of all interested persons or taxpayers for or against the establishment of the area, the extent of the area, or the furnishing of specific types of extended services [*See* CAL. GOV'T CODE §§25210.16-25210.17a].

Section 25210.18 provides that the county board of supervisors may, at the conclusion of the public hearing, abandon the proposed establishment of the county service area or may determine to establish the area. If the board determines to establish the area, it shall by resolution so declare and finally determine and establish the boundaries of the area and the types of services to be performed therein. Chapter 157 amends §25210.18 to provide that if the board determines to establish the area, it shall adopt a resolution either declaring the area *finally established without an election,* or *declaring the area established subject to confirmation by the voters of the proposed area on the question of such establishment.* Upon adoption of a resolution establishing an area *without an election,* the area is established for all purposes subject only to compliance with the requirements of Chapter 8 (commencing with §54900) of the Government Code, relating to boundaries, and the provisions of Article 2.5. Article 2.5 (§§25210.21-25210.23) provides that if a petition signed by at least 10% of the registered voters residing within the proposed area is received within 60 days following adoption of the resolution, the board must either rescind the resolution or put the matter to the vote of the registered voters within the area. If the resolution establishes an area *subject to confirmation by the voters,* such confirmation shall be obtained pursuant to §25210.18a and shall not be subject to the provisions of Article 2.5. Chapter 157 has added §25210.18a to the Government Code to specify the details and elements of such election. After canvassing the returns of the election the board shall adopt a resolution

either: (1) confirming the prior declaration of establishment, if a majority of the votes are so in favor, or (2) determining the prior declaration of establishment defeated by failure to receive the required vote, in which case the county services in question shall not be provided to the area from general funds of the county.

Public Entities, Officers, and Employees; housing authority commissioners—conflict of interest

Health and Safety Code §34272 (amended).
AB 755 (Belotti); STATS 1972, Ch 367

Part 2 (commencing with Section 34200), Division 24 of the Health and Safety Code provides for the creation and operation of a housing authority within each city and county. The housing authority is empowered to carry out slum clearance and the substitution of low-rent, safe and sanitary dwellings [Kleiber v. City and County of San Francisco, 18 Cal. 2d 718, 117 P.2d 657 (1941)].

Prior to the enactment of Chapter 367, Section 34272 provided that a housing authority commissioner could not be an officer or employee of the city or county for which the authority was created [*See* 53 OPS. ATT'Y GEN. 302 (1970)], but could be a member, commissioner or employee of any other agency or authority of, or created for, the community. Section 34272 has been amended to permit a commissioner to be an employee of the county or city for which the authority is created. However, an officer or employee of a city or county in which an authority is established may serve as a commissioner only if such officer or employee does not exercise powers or duties in his office or employment that may conflict with the exercise of the independent judgment required to carry out the purposes of a housing authority.

See Generally:
1) 53 OPS. ATT'Y GEN. 302 (1970).
2) 51 OPS. ATT'Y GEN. 30 (1968).

Public Entities, Officers, and Employees; housing authority commissioners—appointments

Health and Safety Code §§34270, 34271, 34271.5, 34272, 34276 (amended).
AB 419 (Burton); STATS 1972, Ch 120
AB 1415 (Arnett); STATS 1972, Ch 505

Sections 34270 and 34271 of the Health and Safety Code have been

amended in regard to the appointment of housing authority commissioners. The elected mayor of a city, or if the office of mayor is not elective, the governing body of the city (§34270), or the governing body of a county (§34271), is authorized to appoint either five or seven persons as commissioners of the authority, rather than five, the previous limit. If an authority with five commissioners is already in existence, such mayor or governing body of the city, or the governing body of the county may increase the number to seven by appointing two additional members.

If seven rather than five commissioners are appointed, the two additional members are required to be project tenants, and one shall be a senior citizen over 62 years of age.

Chapter 505, as specifically related to San Mateo County, only requires one of the two additional commissioners to be a project tenant, but the other must be over 62 years of age. Also, such additional commissioners must not have been previous commissioners of the housing authority.

Section 34272 has been amended to provide that if a commission of seven has been appointed, the terms of four of the commissioners first appointed will be one, two, three, and four years respectively. The last three commissioners will serve terms of four years each. If two tenant commissioners are added to an already existing commission, they will each serve four years. If a tenant commissioner ceases to be a tenant, he shall be disqualified and another tenant shall be appointed to fill the unexpired term.

Section 34276 has been amended to provide that in the case of a commission of seven, four commissioners will constitute a quorum.

COMMENT

The Housing Act encourages operation by local public agencies [42 U.S.C. §1451(b) (1970)] which usually administer the renewal and housing programs. The commissioners of the local agencies are generally appointed with no requirement of prior experience with housing or redevelopment programs. It has been said that there is "very little political pressure on administrative agencies to enforce particular statutory provisions that aid tenants or further expansion of low-income housing. In addition, there is little possibility that low-income persons can affect the administrative process themselves" [Ronfeldt and Clifford, *Judicial Enforcement of the Housing and Urban Development Acts,* 21 HAST. L.J. 317, 325 (1970)].

There have been several recent cases where injunctions were granted against housing projects for failure to provide adequate relocation housing [Western Addition Community Organization v. Weaver, 294 F. Supp. 433 (N.D. Cal. 1968)].

Chapters 120 and 505 appear to have amended the Health and Safety Code to provide tenants with more adequate representation and with a voice in the administration of housing authorities. However, the appointment of such commissioners is not mandatory and is apparently at the option of the governing body.

See Generally:

1) Hubbard, *Landlord Duties of the Local Public Agency: A Source of Protection for Residents in Urban Renewal Areas,* 45 N.Y.U. L.Q. 1017 (1970).
2) Ronfeldt and Clifford, *Judicial Enforcement of the Housing and Urban Development Acts,* 21 HAST. L.J. 317 (1970).

Public Entities, Officers, and Employees; redevelopment project areas

Health and Safety Code §33320.2 (new).
AB 1041 (Brathwaite); STATS 1972, Ch 568

Chapter 568 adds Section 33320.2 of the Health and Safety Code to the Community Redevelopment Law [CAL. HEALTH AND SAFETY CODE §33000, *et seq.*] to provide that the area included within a project and a project area (as defined by Section 33320.1) may be either contiguous or noncontiguous.

COMMENT

Prior to the addition of Section 33320.2, the law was silent with regard to the question of contiguous or noncontiguous project areas. In practice, redevelopment plans had been contiguous until 1968, when the Federal Neighborhood Development Program [42 U.S.C. §1469, *et seq.* (1970)] was instituted in projects across the country [1968 U.S. CODE CONG. AND AD. NEWS 2915-2918]. Under this program, noncontiguous project areas can be linked by the pooling of excess grant-in-aid credits [42 U.S.C. §1454 (1970)] from regular urban redevelopment projects for the benefit of a neighborhood development program [1968 U.S. CODE CONG. AND AD. NEWS 2917]. It appears that the addition of Section 33320.2 will allow projects not assisted by federal involvement to be executed similarly to the Federal Neighborhood Development Program by permitting such projects to link one financially strong project area with a noncontiguous weak

project area, thereby assisting the financing of such project areas [Interview with Steven Taber, Assistant Legislative Consultant, Senate Local Government Committee, Oct. 4, 1972, Sacramento, California].

See Generally:

1) 42 U.S.C. §1469, *et seq.* (1970).
2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA LAND SECURITY AND DEVELOPMENT §§27.1-27.38 (1960).
3) CONTINUING EDUCATION OF THE BAR, CALIFORNIA ZONING PRACTICE §§3.67-3.80 (1969).
4) 1968 U.S. CODE CONG. AND AD. NEWS 2915.

Public Entities, Officers, and Employees; redevelopment reports

Health and Safety Code §33352 (amended).
AB 1842 (Maddy); STATS 1972, Ch 324

Prior to amendment, Section 33352 of the Health and Safety Code required every redevelopment plan submitted by an agency to the local legislative body to be accompanied by a report containing: (a) reasons for selection of the project area; (b) description of the physical, social, and economic conditions existing in the area; (c) proposed method of financing the redevelopment of the project area; (d) method or plan for relocation of families and persons to be temporarily or permanently displaced; (e) analysis of the preliminary plan; (f) report and recommendations of the planning commission.

This section has been amended by Chapter 324 to require every redevelopment plan submitted by a redevelopment agency to the legislative body to be accompanied by a report containing in addition to the above requirements: a summary of minutes of all meetings of the redevelopment agency with the project area committee [CAL. HEALTH AND SAFETY CODE §33387]; a statement of purpose, location and extent of acquisition of property to the planning agency [CAL. GOV'T CODE §65402]; and an environmental impact report [CAL. PUB. RESOURCES CODE §21151]. This chapter thus brings together under one code section a description of what is now required to be submitted to the local legislative body prior to adoption of the redevelopment plan.

Chapter 324 also amends §33352 to provide that the required report relating to a method or plan for relocation of displaced persons shall now include the provision required by §33411.1 of the Health and Safety Code that no persons or families of low or moderate income shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by such displaced person or family

at rents comparable to those at the time of their displacement [CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 135].

COMMENT

Health and Safety Code §33352 was enacted in 1963 [CAL. STATS. 1963, c. 1812, §3, at 3692] and contained a list of requirements to be included within a report which was to accompany the redevelopment plan when the agency submitted it to the local legislative body. Since 1963, additional code sections have been added which require certain other items to be submitted to the legislative body [CAL. HEALTH AND SAFETY CODE §33387, *as enacted*, CAL. STATS. 1969, c. 995, §1, at 1901; CAL. GOV'T CODE §65402, *as enacted*, CAL. STATS. 1967, c. 1165, §1, at 2850; CAL. PUB. RESOURCES CODE §21151, *as enacted*, CAL. STATS. 1970, c. 1433, §1, at 2783].

However, no time was stated in these code sections as to when the items must be submitted to the legislative body. Chapter 324 clarifies the ambiguity by including these more recent sections within the provision of §33352 which specifies that the report and other items must accompany the redevelopment plan.

Public Entities, Officers, and Employees; hiring practices

Government Code §§19702.1, 19702.2, 50084, and 50085 (new).
AB 674 (Brathwaite); STATS 1972, Ch 915
Support: California Rural Legal Assistance

Chapter 915 adds Sections 19702.1 and 50084 to the Government Code to provide that state civil service and local agency hiring and promotional practices shall conform to the Federal Civil Rights Act of 1964 [42 U.S.C. §§2000(a)-1, 2000(e) *et seq.* (1970)].

Section 19702.2, relating to state civil service, has been added to provide that educational prerequisites or testing methods or educational methods which are *not job-related* shall not be employed as part of hiring or promotional practices *unless there is no adverse effect*. Section 19702.2 further provides that nothing in this section shall be interpreted to limit the authority of the State Personnel Board regarding the state merit selection and examining program, under article XXIV of the California Constitution.

Chapter 915 also adds §50085, which similarly provides that no local agency shall, as part of its hiring or promotional practices, employ

any educational prerequisites or testing or evaluation methods which are not job-related unless there is no adverse effect.

COMMENT

The effect of Chapter 915 is to eliminate any uncertainty regarding educational prerequisites in hiring and promotional practices in state and local governments, which are already regulated somewhat by federal provisions [Griggs v. Duke Power Co., 401 U.S. 424 (1971); Federal Civil Rights Act of 1964, *supra*; Federal Equal Employment Opportunity Commission and Fair Employment Practices Commission guidelines] and state law [CAL. GOV'T CODE §18930] [Interview with Charles Cole, Committee Consultant to the Assembly Committee on Employment and Public Employees, Sacramento, California, Oct. 16, 1972].

In *Griggs v. Duke Power Co.* [401 U.S. 424 (1971)], Black employees brought a class action against their employer challenging his requirement of a high school diploma or passing of intelligence tests as a condition of employment in, or transfer to jobs, at the plant. The United States Supreme Court held that: "[i]f an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited" [Griggs v. Duke Power Co., at 431]. Referring to the Civil Rights Act of 1964, the Court further stated that what Congress has forbidden is giving these devices and mechanisms (i.e., testing and measuring procedures) controlling force unless they are demonstrably a *reasonable measure of job performance* [Griggs v. Duke Power Co., at 436].

Chapter 915 applies this *specific standard* to state and local governments in California, although, as above-mentioned, similar regulations have existed previously. The federal laws and federal agency guidelines apply to projects within California, especially when federal funds are connected with a project; but where a project is solely state-financed, and perhaps not subject to federal controls concerning hiring and promotional practices, Chapter 915 would specifically apply the federal standard, expressed in the Civil Rights Act of 1964 as interpreted by the Supreme Court in *Griggs* [Interview with Charles Cole, *supra*].

See Generally:

1) Griggs v. Duke Power Co., 401 U.S. 424 (1971).
2) CAL. GOV'T CODE §18930.
3) FEDERAL CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §§2000(a)-1, 2000(e) *et seq.* (1970).

Public Entities, Officers, and Employees; resignations

Government Code §19502 (amended).
SB 318 (Harmer); STATS 1972, Ch 1333
Support: California State Employees' Association

Government Code §19502 provides for the setting aside of a state civil service employee's resignation if it was: (1) given or obtained pursuant to or by reason of mistake, fraud, duress, undue influence; or (2) for any other reason, not the free, voluntary and binding act of the person resigning. Chapter 1333 has amended this section to provide that if an employee's resignation is set aside pursuant to this section, such employee shall be reinstated to his former position and shall be paid his salary for the period he was removed from state service as a result of such resignation. However, any compensation the employee earned, or might reasonably have earned, during any period commencing more than six months after the initial date of resignation, shall be deducted from any salary due him.

See Generally:
1) 2 CAL. ADMIN. CODE §445 (1970).

Public Entities, Officers, and Employees; landscaping and lighting

Streets and Highways Code Part 2 (commencing with §22500) of Division 15 (new).
AB 1268 (Beverly); STATS 1972, Ch 630

Chapter 630 enacts the Landscaping and Lighting Act of 1972. This comprehensive act provides requirements for the formation of special assessment districts and for the levy and collection of special assessments to pay the costs and the expenses of installing or planting of landscaping, statuary, fountains and other ornamental structures and lighting, and for the maintenance thereof. These districts may be formed by a city, county, a city and county, or a special district.

Public Entities, Officers, and Employees; regional park districts

Public Resources Code §§5535, 5538, 5549, 5553, 5556, 5559, 5594 (amended); §5545.2 (new); §5550 (repealed).
AB 61 (Dent); STATS 1972, Ch 77
SB 256 (Petris); STATS 1972, Ch 455

Article 3 (commencing with §5500) of the Public Resources Code

provides for the establishment and governance of regional park districts. Districts are empowered to take real property by grant, appropriation, purchase, gift, devise, condemnation or lease (§5540).

Chapter 455 adds §5542.5 to the Public Resources Code to provide that when property is appropriated or otherwise acquired for public use as a regional park operated by a regional park district, there is a rebuttable presumption affecting the burden of proof of its having been appropriated or otherwise acquired for the best and most necessary public use.

This presumption applies only when such property is sought to be acquired for *city* or *county road, street,* or *highway purposes,* and such property was dedicated to or established for park or recreational purposes prior to the initiation of road, street, or highway route location studies. Under such circumstances, an action for declaratory relief may be brought by the park district in the superior court to determine the question of which public use is the best and most necessary public use for such property. The action for declaratory relief must be filed and served within 120 days after the district receives notice from the city or county that a proposed route or site or an adopted route includes such property. Such action for declaratory relief shall have preference over all other civil actions in regard to setting the action for hearing or trial. If an action for declaratory relief is not filed and served within the 120-day period, the right to bring such action is waived and the rebuttable presumption shall not apply; nor shall the presumption apply when a declaratory relief action with respect to such property may not be brought pursuant to this section.

It should be noted that §1241.7 of the Code of Civil Procedure establishes a similar rebuttable presumption that property appropriated for public use as a state, regional, county or city park or recreation area, wildlife or waterfowl management area, historical site, landmark or ecological reserve has been appropriated for the best and most necessary public use. Such presumption is only applicable to land sought to be acquired for *state highway* or *public utility* purposes, and §1241.7 further specifies that only the owner of the land may bring a declaratory relief action to determine the best and most necessary public use.

Sections 5535, 5538, 5549, 5550, 5553, 5556 and 5559 of the Public Resources Code provide for the selection and appointment of regional park district officers and specify their powers and duties. These sections have been amended to: (a) provide that the regional park district board of directors shall choose one of its members to serve as

secretary and another to serve as treasurer; (b) eliminate the appointment of a superindent by the board; (c) replace the accountant with a controller; and (d) allocate the duties of the district manager to the general manager.

Sections 5549 and 5594 provide that with the approval of the board of directors, the general manager may bind the district, without advertising written contract or bids, for the payment for supplies, labor or other valuable consideration furnished to the district, in amounts not exceeding $3,500. Prior to the enactment of Chapters 77 and 455, the maximum amount allowed under these sections was $2,000.

See Generally:

1) 33 OPS. ATT'Y GEN. 126 (1959).
2) 2 PAC. L.J., REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 346 (1971).

Public Entities, Officers, and Employees; uniform application of fire protection standards

Health and Safety Code §13143.7 (new).
AB 1858 (Lanterman); STATS 1972, Ch 695

Chapter 695 adds §13143.7 to the Health and Safety Code to express the legislative intention that the regulations and standards adopted by the State Fire Marshall, pursuant to §13143.6, shall apply uniformly throughout the State of California. Section 13143.6 specifies fire protection standards for buildings or structures used or intended for use as a home or institution for the housing of any person of any age when such person is referred to or placed within such home or institution for protective social care and supervision services by any governmental agency. No county, city, city and county, or district shall adopt or enforce any ordinance or local rule or regulation relating to fire and panic safety in buildings or structures used or intended for use as stated above.

Public Entities, Officers, and Employees; annexation of noncontiguous lands

Government Code §61800 (amended); Public Utilities Code §17301 (amended).
SB 1409 (Stiern); STATS 1972, Ch 413

Section 61800 of the Government Code concerns the annexation of land to community services districts. This section has been amended to allow the annexation of *noncontiguous* as well as contiguous

unincorporated territory. Section 17301 of the Public Utilities Code, concerning annexation of land to public utility districts, has been correspondingly amended to authorize annexation of noncontiguous as well as contiguous lands in the manner set forth in the District Reorganization Act of 1965 (commencing with Section 5600 of the Government Code).

COMMENT

Prior to the enactment of Chapter 413, the law provided that annexations to a community services district or to a public utility district must consist of contiguous territory. Annexation of property which was not contiguous to either of these types of districts required the running of a small corridor of land between the district and the annexed area. This not only involved great expense but was conducive to urban sprawl. By allowing noncontiguous, unincorporated territory to be annexed to said districts, Chapter 413 appears to assist small rural communities, not contiguous to a community services or public utility district, to be more effectively served by annexation to such districts [Interview with Steven Taber, Assistant Legislative Consultant, Senate Local Government Committee, Oct. 4, 1972, Sacramento, California].

Public Entities, Officers, and Employees; franchises along state highways

Streets and Highways Code §§682, 685, 687, 688, 689, 692, 693, 695 (amended).
SB 691 (Alquist); STATS 1972, Ch 708

Section 682 of the Streets and Highways Code has been amended to give counties the authority presently possessed by cities to grant franchises along state highways within their boundaries. Every city and county shall have such power to the extent and in the manner that it has power to grant franchises authorizing the exercise of any privilege in, over, and upon city streets, or county highways, as the case may be, subject to the conditions and limitations provided in Sections 682-695.

Chapter 708 amends §§685, 687, 688, 689, 692, 693, and 695 in conformity with the change in §682. In addition, §688 has been amended to require that in cases in which the approval of the Department of Public Works is not required, the city or county shall give

notice to the department of any application for a franchise affecting a state highway at the time of the filing of such application by any applicant. Prior to amendment, §688 required a notice of an intention to grant a franchise affecting a state highway at least ten days prior to granting such franchise.

Public Entities, Officers and Employees; Department of Justice—reorganization

Business and Professions Code §§6876.1, 21625, 21632, 21633, 21634, 21635 (amended); Civil Code §607f (amended); Corporations Code §§10401, 10402 (amended); Education Code §§13128, 12588, 12589 (amended); Financial Code §21208 (amended); Government Code §§1030, 14710, 15001, 15100, 15103, 15104, 20017.75, 20803.7, 22013 (amended); §20017.7 (repealed); Health and Safety Code §§11002.1, 11102, 11103, 11104, 11105, 11106, 11166.05, 11166.08, 11166.10, 11166.11, 11177, 11226, 11228, 11250, 11331.5, 11332, 11333, 11395, 11425, 11426, 11573, 11574, 11576, 11652, 11654, 11655, 11655.6, 11656, 11657, 11680, 11722, 11851, 11852, 11853, 11903, 11925.1, 11925.2, 11925.3, 11925.4 (amended); §§11004, 11005, 11100, 11101 (repealed); §§11655.5, 11722 (new); Labor Code §§3212.7, 4800, 4802, 4803 (amended); Penal Code §§290, 830.3, 2082, 4852.12, 4852.14, 4852.17, 11006, 11050, 11050.5, 11051, 11102, 11105, 11107, 11110, 11113, 11115, 11116, 11117, 11120, 11122, 11123, 11124, 11125, 11126, 11127, 11150, 11152, 11161.5, 12030, 12052, 12053, 12054, 12075, 12076, 12077, 12078, 12079, 12090, 12092, 12094, 12230, 12231, 12250, 12251, 12305, 12306, 12307, 12403, 12423, 12424, 12435, 12450, 12452, 12454, 12455, 12456, 12457, 12458, 13010, 13011, 13012, 13020, 13021, 13022 (amended); §§11000, 11005, 11007, and Article 1 (commencing with §13000) (repealed); Welfare and Institutions Code §§504, 5328.2 (amended); §§8104, 16018 (repealed); §§8104, 16018 (new).
SB 919 (Lagomarsino); STATS 1972, Ch 1377

Chapter 1377 has been enacted to abolish the Bureau of Criminal Identification and Investigation and the Bureau of Narcotic Enforcement (also known as the Division of Narcotic Enforcement) in the Department of Justice, and to transfer their functions to the Department of Justice *generally* and to the Attorney General.

Chapter 1377 also makes necessary revisions relating to the status of law enforcement members in the State Employees' Retirement Law [CAL. GOV'T CODE §20000 *et seq.*], Federal Old Age and Survivors Insurance Law [CAL. GOV'T CODE §22000 *et seq.*], and Workmen's Compensation and Insurance Law [CAL. LABOR CODE §3201 *et seq.*], to reflect the abolition of the bureaus specified above.